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No. 93-1539

In the Supreme Court of the United States

OCTOBER TERM, 1993

STATE OF LOUISIANA, ET AL., PETITIONERS

v.

RAY HAYS, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTIONS PRESENTED

1. Whether a redistricting plan that contains a majority-minority district is subject to strict scrutiny solely because the legislature that enacted the plan intended to create such a district.

2. Whether the boundaries of District 4 in Louisiana's redistricting plan are so irrational on their face that they can be understood only as an effort to segregate voters into separate voting districts because of their race.

3. Whether the fact that the State could have created a more compact majority-minority district than District 4 establishes that the State's plan is not narrowly tailored to the State's compelling interest of creating a second majority-minority district.

4. Whether the fact that the State could have created a majority-minority district that would give minority voters an opportunity to elect a candidate of their choice, but that had a lower minority population than District 4, establishes that the State's plan is not narrowly tailored to the State's compelling interest of creating a second majority-minority district.

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INTEREST OF THE UNITED STATES

The United States has primary responsibility for the administration and enforcement of Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, and the United States has substantial responsibility for the enforcement of Section 2 of the Act, 42 U.S.C. 1973. Both of those provisions prohibit a wide range of racially discriminatory electoral practices. Both may require a State, under some circumstances, to draw electoral districts in which members of minority groups protected by the Voting Rights Act constitute a majority. This case raises issues concerning the extent to which the Equal Protection Clause of the Constitution imposes limits on a State's ability to draw such districts. Insofar as those limits preclude a State from pursuing other legitimate

state policies while attempting to comply with the Voting Rights Act, they render voluntary compliance with the Voting Rights Act more difficult. The United States thus has a substantial interest in the issues presented by this case.

STATEMENT

This case concerns a challenge to a congressional redistricting plan adopted by the State of Louisiana following the 1990 census. The three-judge district court held that the plan violated the Equal Protection Clause, enjoined use of the plan in any future elections, and ordered that the terms of individuals elected to the House of Representatives in accordance with the plan shall expire on January 3, 1995.

1. Louisiana has a population of approximately 4.2 million, of whom 30.6% are African-American. African-Americans comprise 28% of the voting age population of Louisiana and nearly 28% of the registered voters. From Reconstruction until the 1980's, African-Americans had not been in the majority in any congressional district in Louisiana. As a result of litigation following the 1980 census, they were in the majority in one of Louisiana's eight congressional districts. See *Major* v. *Treen*, 574 F. Supp. 325 (E.D. La. 1983).

In 1991, the Louisiana legislature redistricted the eight Board of Elementary and Secondary Education (BESE) districts, whose boundaries had traditionally parallelled congressional district lines. The new BESE plan created only one district with an African-American majority. Because Louisiana is a covered jurisdiction under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, it must submit any change in its electoral practices or procedures to the United States Department of Justice for preclearance or obtain judicial preclearance.

When the BESE plan was submitted for preclearance, the Assistant Attorney General interposed an objection under Section 5. As explained in his letter to state officials, the objection was based on the facts (1) that Louisiana's African-American population was large enough and compact enough to create two majority African-American districts, and (2) that the State had not carried its burden of proving that its decision to create only one such district did not have a discriminatory purpose. See *Georgia* v. *United States*, 411 U.S. 526 (1973); 28 C.F.R. 51.52. Ultimately, the State adopted a new BESE plan that contained two majority African-American districts, and the Assistant Attorney General did not interpose an objection to that plan when it was submitted for preclearance.

2. As a result of the 1990 census, the State lost one of its eight congressional seats. Accordingly, during its 1991 and 1992 sessions, the state legislature prepared a congressional redistricting plan. In May, 1992, the legislature enacted a new plan, Act 42 of 1992. J.S. App. 3. That plan creates two majority African-American districts. One of them, District 2, is similar in its boundaries to the majority African-American district in the New Orleans area in the preceding plan. Its voting age population is 56% African-American. *Ibid.* The other majority-minority district, District 4, became the focus of this litigation. It runs from near the northwest corner of the State eastward along the State's northern border, and then south along the Mississippi River to the central portion of the State, where it has three extensions. *Id.* at 56. The voting age population of District 4 is 63% African-American. *Id.* at 5.

3. On July 22, 1992, appellees filed their complaint in this case, alleging that Act 42 violated, *inter alia*, the Equal Protection Clause and the Voting Rights Act. A

three-judge court was convened pursuant to 28 U.S.C. 2284. On August 26-27, 1992, the court held an evidentiary hearing. After the hearing, the court denied appellees' request for an injunction, denied their constitutional claims, and took their Voting Rights Act claims under advisement. J.S. App. 6.

4. On June 28, 1993, this Court decided *Shaw* v. *Reno*, 113 S. Ct. 2816 (1993). Since appellees had advanced claims similar to those advanced by the plaintiffs in *Shaw*, the district court requested supplemental briefing concerning the implications of *Shaw* for this case. In August, 1993, the court held a two-day evidentiary hearing to determine whether Act 42 is subject to strict scrutiny under the standards stated in *Shaw* and whether, if it is, it nonetheless complies with the Equal Protection Clause because it is narrowly tailored to further a compelling interest. On December 28, 1993, the court issued an opinion and order holding that Act 42 violates the Equal Protection Clause. J.S. App. 3-75, 89-90.

The court rejected the State's claims that appellees lacked standing, see J.S. App. 7-8; that appellees had not alleged a claim of violation of the equal protection principles on which this Court's decision in *Shaw* v. *Reno* was based, see J.S. App. 8-10; and that the court's interlocutory ruling in 1992 rejecting appellees' constitutional claims foreclosed further litigation of those claims, see *id.* at 10-11.

a. Turning to the merits of appellees' claims, the district court held that "[a] legislature creates a racially-gerrymandered districting plan when it *intentionally* draws one or more districts along racial lines or otherwise intentionally segregates citizens into voting districts based on their race." J.S. App. 12. The district court held that such plans are subject to strict scrutiny. *Id.* at 13-14.

In the court's view, *Shaw* v. *Reno* established that racial gerrymandering may be proven "*indirectly* or *inferentially* * * * when districts are so bizarrely shaped that they presumptively bespeak an impermissible purpose." J.S. App. 15; see also *id.* at 18-19. On the other hand, intentional use of race may "also be proved by *direct* evidence that a legislature enacted a districting plan with the specific intent of segregating citizens into voting districts based on their race." *Id.* at 15. The district court found what it believed to be "overwhelming evidence—both *indirect* and *direct*—that [Act 42] is a product of racial gerrymandering." *Id.* at 15.

With respect to the so-called "indirect" method of proof that was at issue in *Shaw* itself, the court found that District 4 is "highly irregular." J.S. App. 27. The court found that the district was barely contiguous at several points. *Id.* at 29-30. The district court also found that District 4 does not respect political subdivision lines, since it includes four whole parishes but only parts of 24 others. *Id.* at 30. And the district court found that District 4 combines people from a wide variety of different ethnic, religious, and linguistic communities, *id.* at 31, people with distinct economic interests, *id.* at 31-32, and people from a variety of geographical and topographical regions, *id.* at 32.

The State argued that District 4 is not subject to strict scrutiny under *Shaw* because the legislature's decision to draw a district with its boundaries, rather than a more compact majority-minority district that could have been drawn, could be explained on the basis of factors other than race. In particular, the State attempted to prove that it had chosen District 4 as it was configured in Act 42—rather than more compact alternatives—because it wanted to protect the seats of incumbents of both parties. Since both District 4 and the

more compact alternatives would have achieved the goal of creating a second majority-minority district, the decision to create the irregular boundaries of District 4 was based on the State's desire to protect incumbent members of its congressional delegation, not on race.

The district court adverted to the State's justification, J.S. App. 33 n.43, but rejected it. In the court's view, the ultimate question under *Shaw* is whether the plaintiff has demonstrated "that the plan cannot be understood without postulating that the legislature was significantly actuated by racial motives." J.S. App. 35 n.46. The court observed that the State's evidence showed at most that "incumbency affected only the general location of the gerrymander that is District 4," *id.* at 33 n.43; "once the decision to create a second minority-majority district had been made," the fact that incumbency played a role in dictating its boundaries and location was, for the court, "irrelevant." *Ibid.*

Turning to what it called the "direct" method of proving racial gerrymandering, the court held that it "need not even consider the kind of indirect or inferential proof approbated in *Shaw*," J.S. App. 39, because "[v]irtually every witness who testified at the Trial * * * either affirmatively stated or accepted as gospel that [Act 42] was drawn with the *specific intent* of ensuring the creation of a second, safe, black majority congressional district." *Id.* at 40. The court concluded that, even if it had misconstrued or misapplied this Court's ruling in *Shaw*, "the *direct evidence* that Act 42 was a product of racial gerrymandering is overwhelming." J.S. App. 43. That was sufficient to subject Act 42 to strict scrutiny and thus to require the State "to demonstrate that Act 42 is narrowly tailored to further a compelling governmental interest." J.S. App. 43. (internal quotation marks omitted).

b. With regard to the existence of a compelling state interest, the State argued that, when it adopted Act 42, it reasonably believed that its failure to create two majority African-American districts would violate Section 2 of the Voting Rights Act and would preclude it from obtaining Section 5 preclearance for the plan. The State argued that the Attorney General's objection to the 1991 BESE plan that contained only one African-American majority district strongly supported that conclusion. The State also argued that it had a compelling interest, in light of the racially polarized voting in the State, in adopting a redistricting plan with two majority-minority districts in order to provide fair opportunities to African-American citizens and to remedy the effects of past discrimination.

The district court assumed that "one or all of [these interests] constitutes a compelling state interest" to include a second majority-minority district in the redistricting plan. J.S. App. 45. But the court held that the plan was not narrowly tailored to further those interests, for two reasons.

First, the court held that District 4 was not narrowly tailored because it "entail[ed] considerably more segregation than is necessary to satisfy the need for a second black majority district." J.S. App. 47. The court found that "a district with a black voting age population of not more than 55% * * * would have been adequate to ensure that blacks could elect a candidate of their choice," *id.* at 50, and that District 4's 63% black voting age population was therefore 8% more than necessary "to satisfy the interest of a second district in which black officials can be readily elected." *Ibid.*

Second, the court held that Act 42 was not narrowly tailored because it "excessive[ly] disregard[ed] * * * traditional redistricting criteria" and "derogat[ed] from

third-party interests." J.S. App. 50. In particular, the court noted that numerous witnesses on both sides, including legislators, state officials, and experts, had testified "that a plan could be devised that would include a second black majority district, yet still be significantly more compact and comport much more closely with other traditional redistricting principles." *Id.* at 52. The court concluded that the plan "unnecessarily violates a host of historically important redistricting principles, thereby adversely affecting countless third party interests." *Id.* at 53.

c. Judge Walter filed a concurring opinion. J.S. App. 57-75. In his view, "[s]ince redistricting along racial lines was a *motivating factor*, Act 42 is subject to strict scrutiny." *Id.* at 69. He also stated his view that each of the State's compelling interests was weak. *Id.* at 74. Finally, he agreed with the panel majority that, even if the State had compelling interests in drawing a second majority-minority district, Act 42 was not narrowly tailored to advance any of those interests. J.S. App. 74.

d. The district court enjoined the State "from holding any future congressional elections based on the plan contained in Act 42." J.S. App. 89. Although it refused to invalidate the 1992 congressional elections held under the plan, it ordered that "the term of office of each member of the United States House of Representatives * * * who represents a district created under the plan in Act 42 * * * shall expire" on January 3, 1995, and that "such terms of office and such districts shall not be extended or carried over into the next Congress in any manner whatsoever." *Id.* at 89-90.

DISCUSSION

The Court should note probable jurisdiction.[1] The opinion of the district court misconstrues this Court's decision in *Shaw* v. *Reno* and decides sev-eral related questions of constitutional law that are likely to be of substantial significance in voting rights litigation throughout the country. These issues should not be resolved without full briefing and argument.

1. The district court held that Act 42 is subject to strict scrutiny solely because race was a factor in its creation. This holding is based on an erroneous analysis of this Court's precedents.

a. The district court adjudicated this case on the premise that a State's decision to create majority-minority districts, without more, requires strict scrutiny under the Equal Protection Clause. As a definition of the term "racial gerrymandering," the court stated that "[a] legislature creates a racially-gerrymandered districting plan when it *intentionally* draws one or more districts along racial lines or otherwise intentionally segregates citizens into voting districts based on their race." J.S. App. 12. The court held that the "bedrock principle underlying the Court's decision in *Shaw* is that racially gerrymandered redistricting plans are subject to * * * strict scrutiny." *Id.* at 13. Since it was conceded in the district court that the State intended, through the enactment of Act 42, to create a second majority-minority district, that "direct evidence," J.S. App. 39, was sufficient, in the court's view, to subject the legislature's plan to strict scrutiny.

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[1] We have been informed that the Louisiana legislature recently enacted a new congressional districting plan that was signed into law by the Governor on April 25, 1994.

The district court's analysis is inconsistent with this Court's decision in *United Jewish Organizations of Williamsburgh, Inc. (UJO)* v. *Carey*, 430 U.S. 144 (1977). In *UJO*, as in this case, it was not disputed that the State had intentionally redistricted to create majority-minority districts. Five of the eight Justices who participated in *UJO* rejected the claim that the mere use of race to create majority-minority districts was unconstitutional, at least absent any contention that the proposed plan had the intent or effect of diluting the majority's voting strength. Justice White, writing for three Justices, explained that the *UJO* plan was constitutional because, although it deliberately used race, it "represented no racial slur or stigma" and it did not "minimize or unfairly cancel out" the voting strength of any racial group. 430 U.S. at 165. Two other Justices agreed that, though the legislature used race, its plan did not violate the Equal Protection Clause because it did not "undervalue[] the political power of white voters relative to their numbers." See *id.* at 179-180 (Stewart, J., joined by Powell, J., concurring in the judgment).

In adverting to this issue in *Shaw*, the Court "express[ed] no view as to whether 'the intentional creation of majority-minority districts, without more,' always gives rise to an equal protection claim." 113 S. Ct. at 2828. But the Court took pains not to overrule *UJO*. The Court noted instead that a *Shaw*-type claim could not have been made in *UJO* because, although the State in *UJO* employed race in redistricting, it had "adhered to traditional districting principles." 113 S. Ct. at 2829. As the Court repeatedly explained, the claim it was recognizing in *Shaw* was the "analytically distinct" claim that depends on the fact that the State created districts so geographically bizarre that they are

explicable only as an act of racial segregation. See 113 S. Ct. at 2830. The district court's holding in this case that the intentional creation of a majority-minority district is subject to strict equal protection scrutiny regardless of the shape of the district is therefore in conflict with this Court's decision in *UJO* and finds no support in *Shaw*.

b. The district court also concluded that Act 42 is subject to strict scrutiny on the basis of what the court termed the "indirect or inferential" method of proof recognized by this Court in *Shaw*. As we explain above, however, *Shaw* does not establish an "inferential" method of proving that race was a factor in a redistricting plan, since such proof would not, by itself, lead to the conclusion that the plan is suspect under the Equal Protection Clause. Instead, *Shaw* recognized the "analytically distinct" claim that a plan that departs from traditional redistricting criteria so substantially that *on its face* it rationally cannot be understood as anything other than an effort to segregate citizens into separate voting districts on the basis of race is subject to strict scrutiny.

This case presents a substantial question concerning when it may be said that the irregular features of a district "can be understood only as an effort to segregate voters into separate voting districts because of their race," thus calling for strict scrutiny. *Shaw*, 113 S. Ct. at 2832. The district court apparently believed that the irregular shape of a district calls for strict scrutiny unless the district's shape "can be wholly and alternately explained as a product of" non-racial factors. J.S. App. 35.[2] The State, on the other hand, conceded that

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[2] See also J.S. App. 35 (if the plan "can be reasonably conceived as the product of non-racial factors"); *id.* at 34 (if it "can be wholly

it had the objective of creating a second majority-minority district. But, the State argued, the specific configuration of District 4 could be explained on the basis of other factors, such as the protection of incumbents. Although the district court recognized that the State may have shown "that incumbency affected * * * the general location of * * * District 4," *id.* at 33 n.43, it did not investigate or find relevant the extent to which such non-racial factors may have determined the final shape of District 4. This case thus presents the question of whether the application of strict scrutiny turns on the extent and manner in which non-racial factors governed the drawing of irregular district lines.

2. Assuming that Act 42 should be subjected to strict scrutiny, the district court erred in holding that it was not narrowly tailored.

a. The district court assumed that the State had a compelling interest in creating two majority-minority districts, and appellees do not take issue with that assumption in their motion to affirm. As the case comes before this Court, therefore, it must be assumed that the State had a "strong basis in evidence," *City of Richmond* v. *J.A. Croson Co.*, 488 U.S. 469, 500 (1989), for believing that its redistricting plan would dilute the votes of African-Americans in violation of Section 2 of the Voting Rights Act if the plan did not include a second majority-minority district.[3] It must also be assumed that, had the

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explained to be the product of one or more factors other than race"); *id.* at 36 (if it "can be explained entirely without reference to racial gerrymandering").

[3] In a lengthy footnote, J.S. App. 17-22 n.21, the district court criticized the bases for the State's belief that a plan with only one majority-minority district would have violated Section 2. In our view, the district court was mistaken, because it based its finding on the fact that District 4, because of its irregular shape, would not

State not created a second majority-minority district, the State would have had a strong basis for believing that it would have been unable to obtain Section 5 preclearance of the plan from the Attorney General—a result that would have left the State, less than six months prior

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have satisfied the "compactness" precondition of *Thornburg* v. *Gingles*, 478 U.S. 30, 46-47 (1986). A Section 2 challenge, however, would have been based on the possibility that a second sufficiently compact majority African-American district could have been drawn, not on the fact that District 4 as drawn was compact. The district court elsewhere found that a substantially more compact alternative to District 4 was possible. See J.S. App. 51-52.

In the same footnote, the district court accepted that the State had a reasonable basis for believing that the Attorney General would have interposed a Section 5 objection to a plan with only one majority-minority district. J.S. App. 18 n.21. But the court criticized the potential bases for any such objection and argued that the State should not have relied on the possibility of such an objection in deciding whether to create a second majority-minority district. In our view, none of the court's criticisms are well founded. By focusing on "retrogression" objections under Section 5, the court simply ignored the fact that Section 5 objections may be based on "purpose" as well. See 42 U.S.C. 1973c; *City of Richmond* v. *United States*, 422 U.S. 358 (1975). And it is surely a premise of the Section 5 scheme that a State may rely on the interposition of a Section 5 objection in determining whether it must create a majority-minority district. In any event, the District Court for the District of Columbia is the only court that may determine whether a voting change has met the preclearance standards of Section 5. See *United States* v. *Board of Supervisors*, 429 U.S. 642, 645 (1977).

Since the district court went on to decide the case on the basis of an assumption that the State did have a compelling interest in creating a second majority-minority district in order to comply with Sections 2 and 5, and since appellees have not challenged that assumption in their motion to affirm, this case does not present any question to this Court concerning the validity of the compelling interests asserted by the State.

to the 1992 election, with no legally valid congressional districts.

The district court held that Act 42 was not narrowly tailored to satisfy this compelling state interest in creating a plan that included a second majority-minority district. The district court based its holding on two features: the fact that "a second black majority district could have been drawn that would have done substantially less violence to traditional redistricting principles," J.S. App. 51, and the fact that District 4 had "significantly more [African-American voters] than are needed to elect representatives of their choice," *id.* at 49.

b. The district court's finding that narrow tailoring was absent because Act 42 contained districts that were more irregular than they had to be in order to create a second majority-minority district is incorrect. Although it appears true that, in theory, the State could have adopted a redistricting plan with a second majority African-American district that reflected greater respect for traditional redistricting criteria, such a plan would not have satisfied the State's other legitimate interests in this case. For the State here sought not merely to create a second majority African-American district; it also sought to protect existing incumbents, each of whom "did what he could to keep his traditional geographic base." J.S. App. 33 n.43. Cf. *Burns* v. *Richardson*, 384 U.S. 73, 89 n.16 (1966); *White* v. *Weiser*, 412 U.S. 783, 791 (1973). That desire to protect incumbents determined "the general location of * * * District 4" by "pushing the * * * second black majority district generally as far north and east as possible," so that it followed "the northern boundary of Louisiana with Arkansas and the eastern boundary of Louisiana, *i.e.*, the Mississippi River." J.S. App. 33 n.43.

In seeking to comply with the Voting Rights Act by drawing a majority-minority district, a State should be free to weigh other legitimate interests in deciding where and how to draw the district. The State's decision in this case to attach greater importance to protecting incumbents than to other traditional redistricting criteria does not make its plan any less narrowly tailored to its compelling interest in drawing a second majority-minority district. Accordingly, the district court erred in relying on the fact that a more compact district could have been drawn to find that Act 42 was insufficiently narrowly tailored.

c. The other basis for the district court's holding that Act 42 was not narrowly tailored was that, in the court's view, it contained too many minority voters. In voting rights cases, courts have long debated what proportion of minority citizens must be in a district before it offers them a genuine opportunity to elect candidates of their choice in a setting characterized by racially polarized voting. That question, of course, cannot be answered with scientific precision and even a rough answer depends on the facts of a particular case. But the percentage that the State used here—63%—is well within the range of answers that the courts have adopted in similar circumstances. See, *e.g.*, *Ketchum* v. *Byrne*, 740 F.2d 1398, 1413-1417 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985); *Jeffers* v. *Clinton*, 756 F. Supp. 1195 (E.D. Ark. 1990), aff'd mem., 498 U.S. 1019 (1991).

In this case, the district court noted that 63% of the registered voters in District 4 were African-Americans. The court recognized that "it is not the province of this court in this case to establish the demographic specifications of the State's congressional redistricting plan." J.S. App. 50. But the court nonetheless found that "a black voting age population of not more than 55%—and

probably less—would have been adequate to ensure that blacks could elect a candidate of their choice." *Ibid.* In the court's view, the plan thus "packs" an additional 8% minority voting age population into the district than would have been necessary to achieve the State's compelling interest in creating a second black majority district. *Id.* at 48. On that basis, the court held that the plan was not sufficiently narrowly tailored.

Initially, the bare fact that a district has a specific minority population proves nothing at all. If it were concluded that the inclusion of the additional minority voters had caused the legislature to adopt a plan with "irrational" or "bizarre" borders rather than a more compact alternative, the additional minority population might be relevant to the *Shaw* inquiry. The district court, however, made no findings on that issue in this case.

More significantly, the district court's decision puts the State in an unfortunate straitjacket. The court assumed that the State had a compelling interest in complying with Sections 2 and 5 of the Voting Rights Act by drawing a second majority-minority district. But the court held that the State's efforts to comply with its legal obligations became unconstitutional because the State misapprehended the precise number of minority voters that should be included in that district. Such judicial second-guessing of a State's judgment—especially where the State used a number well within the range that has ordinarily been thought appropriate in such situations—is not required by the Equal Protection Clause. And it is inconsistent with this Court's recognition that voluntary compliance with the law, especially by States, should be encouraged, not penalized. See, *e.g.*, *Wygant* v. *Jackson Bd. of Educ.*, 476 U.S. 267, 274, 277-278 (1986) (plurality opinion); *id.* at 290-291

(O'Connor, J., concurring in part and concurring in the judgment); *id.* at 305 (Marshall, J., dissenting).

Finally, there is no reason to believe that the incremental increase of 8% in the percentage of minority voters caused any distinct harm to any of the interests protected by *Shaw*. Especially in circumstances like those present in this case, it is unlikely that the additional minority population in District 4 had any effect on "the perception that members of the same racial group * * * think alike, share the same political interests, and will prefer the same candidates at the polls." 113 S. Ct. at 2827. Nor would it be likely to increase the extent to which "elected officials * * * believe that their primary obligation is to represent only the members of [the minority] group, rather than their constituency as a whole." 113 S. Ct. at 2827. Nor did the district court make any finding that what it termed the "packing" of a small number of additional minority voters in District 4 diluted the minority vote elsewhere in the State sufficiently to make out an independent claim of vote dilution. In the absence of any such finding that the additional minority population in District 4 caused any injury to any interest protected by the Equal Protection Clause, the district court's conclusion that the district was not narrowly tailored because it contained too many minority voters should be rejected.

3. The legal issues determined by the district court in this case are of very substantial significance. Initially, the court's holding that *any* use of race in drawing districts renders the resulting plan constitutionally suspect casts doubt on districting plans adopted by States and local governments throughout the country. Even if that erroneous holding were ignored, however, the district court's decision in this case reaches a number of other legal issues of great importance.

The district court's narrow tailoring rulings effectively amount to a requirement that a State or local government, when creating a majority-minority district in order to satisfy its legal obligation to do so, may create only the most compact and contiguous district possible and the one with the least possible margin of minority population. Thus, a governmental entity that must draw a majority-minority district would be largely disabled from pursuing the numerous non-racial interests that legitimately drive redistricting decisions,[4] if those interests would lead to creation of a more irregular district or would increase its minority population. Since state and local governments may well opt for litigation if their efforts are so narrowly circumscribed, the ultimate effect could be a serious disincentive to settlements and voluntary compliance with the law.

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[4] See, *e.g.*, *Gaffney* v. *Cummings*, 412 U.S. 735, 754 (1973) (fair allocation of power between political parties); *Mahan* v. *Howell*, 410 U.S. 315, 328 (1973) (preservation of political boundaries); *Karcher* v. *Daggett*, 462 U.S. 725, 740 (1983) (maintaining residential patterns); *Burns* v. *Richardson*, 384 U.S. 73, 89 n.16 (1966) (minimizing contests between incumbents).

CONCLUSION

The Court should note probable jurisdiction of the appeal.

Respectfully submitted.

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